

APPEAL NO. 172626
FILED NOVEMBER 28, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 20, 2017, with the record closing on September 25, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the first certification of maximum medical improvement (MMI) and assigned impairment rating (IR) from the designated doctor, (Dr. Z) on March 11, 2015, became final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); (2) the appellant (claimant) reached MMI on January 25, 2015; and (3) the claimant's IR is five percent.

The claimant appealed the ALJ's determinations as being contrary to the great weight and preponderance of the evidence, arguing that Dr. Z corrected his erroneous first certification by issuing another Report of Medical Evaluation (DWC-69) on February 17, 2016, and urging the Appeals Panel to adopt that certification. We note that no certification of MMI and assignment of IR other than that issued by Dr. Z on March 11, 2015, was admitted into evidence.

The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed as reformed.

Although the ALJ includes no finding of fact that the claimant sustained a compensable injury, the record reveals that the claimant sustained a work-related injury on April 13, 2014, when he was involved in a motor vehicle accident.

FINALITY OF FIRST CERTIFICATION

The ALJ's determination that the first certification of MMI and assigned IR from the designated doctor, Dr. Z, on March 11, 2015, became final under Section 408.123 and Rule 130.12 is supported by sufficient evidence and is affirmed.

MMI/IR

The ALJ's determination that the claimant reached MMI on January 25, 2015, with a five percent IR is supported by sufficient evidence and is affirmed.

FINDING OF FACT NOS. 5 AND 6

Although the record reflects that the claimant received written notice of the first certification of MMI and assignment of IR issued by Dr. Z on March 11, 2015, by certified mail, return receipt requested, delivered to the claimant's wife on March 25, 2015, the ALJ, throughout the discussion section of her Decision and Order, mistakenly states the date of delivery of such notice occurred on May 25, 2015. Furthermore, in her Finding of Fact No. 5, the ALJ incorrectly stated:

5. On May 25, 2015, [the] [c]laimant received the DWC-69 as signed and certified by the designated doctor and had 90 days to dispute the certification of [MMI] and assigned [IR] by [Dr. Z].

In her Finding of Fact No. 6, the ALJ incorrectly stated:

6. [The] [c]laimant did not submit a Request for a Benefit Review Conference [BRC] within 90 days after May 25, 2015.

Because the ALJ included an incorrect date of delivery of written notice of the first certification of MMI and assignment of IR by verifiable means, we reform the ALJ's Finding of Fact No. 5 to reflect the actual date of delivery reflected by the evidence as follows:

5. On March 25, 2015, [the] [c]laimant received the DWC-69 as signed and certified by the designated doctor and had 90 days to dispute the certification of [MMI] and assigned [IR] by [Dr. Z].

We further reform the ALJ's Finding of Fact No. 6 to reflect the actual date of delivery reflected by the evidence as follows:

6. [The] [c]laimant did not submit a Request for a [BRC] within 90 days after March 25, 2015.

SUMMARY

We affirm the ALJ's determination that the first certification of MMI and assigned IR from the designated doctor, Dr. Z, on March 11, 2015, became final under Section 408.123 and Rule 130.12.

We affirm the ALJ's determination that the claimant reached MMI on January 25, 2015, with a five percent IR.

We reform Finding of Fact No. 5 to state that on March 25, 2015, the claimant received the DWC-69 as signed and certified by the designated doctor and had 90 days to dispute the certification of MMI and assigned IR by Dr. Z.

We reform Finding of Fact No. 6 to state that the claimant did not submit a Request for a BRC within 90 days after March 25, 2015.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge